

Exhibit "B"

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SPIRIT REALTY, L.P., a Delaware limited
partnership,

Plaintiff,

v.

GH&H MABLETON, LLC, a Georgia
limited liability company; JOHN DOES 1-
10,

Defendants.

Civil Action No.: 1:15-CV-05304 DAB GWG

**DECLARATION IN SUPPORT OF APPLICATION FOR
ATTORNEYS' FEES UNDER FED. R. CIV. P. 37(a)(5)(A)**

ISAAC M. GABRIEL hereby declares as follows:

1. I am a Partner at the law firm of Quarles & Brady LLP, and am lead counsel for Plaintiff Spirit Realty, L.P. ("Plaintiff" or "Spirit") in the above-captioned action. I am over eighteen years of old, and am competent to testify. This Declaration is based on my personal knowledge.

2. This Declaration is being submitted in support of the "*Application for Attorneys Fees Under Fed. R. Civ. P. 35(a)(5)(A)*" (the "Application"). Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Application.

3. I received my Juris Doctor from the Sandra Day O'Connor College of Law at Arizona State University, and have been licensed to practice law in Arizona since 2002. I am a partner at the law firm of Quarles & Brady, which was nationally ranked #120 in the Am Law 200 rankings based on gross revenue.

4. My billing rate during the firm's representation of Spirit was \$435.00 per hour, which is discounted from my standard firm billing rate of \$475.00 per hour. My role in this matter consisted of determining the overall strategy, drafting and reviewing the pleadings and

motions filed with the Court, and overseeing and participating in discovery and discovery disputes.

5. Amelia B. Valenzuela is an Associate at Quarles & Brady. She received her Juris Doctor from Sandra Day O'Connor College of Law at Arizona State University, and has been licensed to practice law in Arizona since 2013. Ms. Valenzuela's billing rate for work performed in this matter was \$260.00 per hour, which is a rate comparable with attorneys with her level of experience in Arizona and is a rate that, upon information and belief, is generally lower than the billing rate of associates at Am Law 200 firms in New York, New York.

6. Sybil Taylor Aytch is a Registered Paralegal at Quarles & Brady, who assisted in the representation of Spirit in this matter. The billing rate for Ms. Taylor Aytch's work performed in this matter was \$230.00 per hour.

7. Throughout the course of this litigation, I have been responsible for communicating the status of the matter to Spirit. Spirit has been billed, and has agreed to pay for, work performed by Quarles & Brady. In connection with the Discovery Disputes outlined in the Application, Spirit has been billed or will be billed, and has agreed to pay, \$12,344.50 for work performed by Quarles & Brady. Attached hereto as **Exhibit 1** is an itemized statement of attorneys' fees that Quarles & Brady has charged in this matter, which were reasonably and necessarily incurred in connection with Spirit's successful prosecution of the Discovery Disputes. Pursuant to the engagement agreement between Quarles & Brady and Spirit, Spirit paid or agreed to pay all of the fees and costs requested in its Application.

8. The attached detailed descriptions in Exhibit 1 include the date on which each task was performed, the name of the person who performed each task, the amount of time expended, measured in tenths of hours, and a brief description of the work performed.

9. Exhibit 1 was generated from individual time records completed by the attorneys. Consistent with Quarles & Brady's practices and policies, individual attorneys keep track of their time as the work is performed. The time data is then entered into the firms' respective accounting systems, which generate billing statements. These practices and procedures are

standard at Quarles & Brady and are part of Quarles & Brady's normal business operations. The entries listed in Exhibit 1 were extracted from Quarles & Brady's computer-generated billing statements.

10. All of the work performed by the attorneys at Quarles & Brady on behalf of Spirit was justified, and the fees shown in Exhibit 1 were reasonable and necessarily incurred. Further, based on my fourteen years' of experience practicing law, the hourly billing rates charged to Spirit are comparable to (or lower than) the rates charged by comparable law firms area for attorneys of comparable skill and experience.

11. It should further be noted that Spirit is not seeking any of the fees incurred by its local New York counsel, the Saiber law firm, to avoid any appearance of duplication on the matters asserted in the Application.

12. The amount of the fee award sought by Spirit for work by Quarles & Brady is a reasonable sum, based upon the importance of the issues in the case, the quality of the law firm and the attorneys performing the legal work for Spirit, the character of the work to be done, and the work actually performed by Quarles & Brady on behalf of Spirit and in connection with the Discovery Disputes..

13. Thus, the total amount of attorneys' fees being sought by Spirit is \$12,344.50.

14. As set forth in the Application and the Motions, the parties met and conferred regarding each of the Discovery Disputes, but GH&H Mableton, LLC failed to act in accordance with its obligations under the Federal Rules of Civil Procedure and the rules and orders of this Court.

15. I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

DATED this 11th day of July, 2016.

/s/ Isaac M. Gabriel
Isaac M. Gabriel

EXHIBIT 1

| Date | Timekeeper | Narrative | Time Spent | Amount |
|-------------|-------------------|--|-------------------|---------------|
| 2/11/2016 | IGABRIEL | Review interrogatory responses and evaluate deficiencies re same, outline letter demanding supplemental responses (.5) | 0.5 | 217.50 |
| 2/12/2016 | AVALENZU | Draft letter re deficient and improper responses to plaintiff's written discovery. | 1.4 | 364.00 |
| 2/15/2016 | AVALENZU | Continue to draft letter re deficient and improper responses to plaintiff's written discovery. | 1.1 | 286.00 |
| 2/15/2016 | IGABRIEL | Review and edit letter to counsel re deficient discovery answers (.3). | 0.3 | 130.50 |
| 2/16/2016 | AVALENZU | Communicate with counsel re status of production of documents pursuant to written discovery. | 0.1 | 26.00 |
| 2/17/2016 | IGABRIEL | Confer with local counsel re options to compel deposition in SDNY, review local rules re same, finalize and send deposition notice to counsel (.3). | 0.3 | 130.50 |
| 2/23/2016 | IGABRIEL | Review correspondence from C. Porterfield requesting to continue deposition (.1); confer with local counsel re local rules on meet and confer and ability to seek sanctions/costs (.2); draft response to C. Porterfield with conditions for continuance (.1); review response and reply to same (.1). | 0.5 | 217.50 |
| 2/24/2016 | IGABRIEL | Emails with counsel re deposition and rebutting allegations that deponent is out of town (.2); draft correspondence to counsel re deposition and deficient discovery, meet and confer attempts (.4); | 0.6 | 261.00 |
| 2/25/2016 | AVALENZU | Draft letter to judge pursuant to local rules requesting relief in discovery dispute (2.0). | 2.0 | 520.00 |
| 2/25/2016 | IGABRIEL | Teleconference with C. Porterfield re deposition and discovery issues (.3); outline letter to A. Valenzuela (.1); work on and revise discovery dispute letter (.8). | 1.2 | 522.00 |
| 2/26/2016 | IGABRIEL | Work on and finalize discovery dispute letter to judge and all exhibits thereto, coordinate same with local counsel. | 1.2 | 522.00 |
| 2/26/2016 | SAYTCH | Electronically file and serve letter re: discovery dispute (0.3); . | 0.3 | 69.00 |

| Date | Timekeeper | Narrative | Time Spent | Amount |
|-------------|-------------------|--|-------------------|---------------|
| 3/2/2016 | IGABRIEL | Confer with J. August prior to hearing on discovery issues (.2); prepare for hearing on discovery issues (.3); attend telephonic hearing (.5); follow up to confirm deposition dates, send amended deposition notice re same (.2). | 1.2 | 522.00 |
| 5/13/2016 | AVALENZU | Draft motion to quash. | 0.7 | 182.00 |
| 5/13/2016 | IGABRIEL | Review subpoenas issued by noteholder after close of discovery, draft correspondence demanding withdraw of same (.2); review response and reply to same (.2); outline motion to quash and confirm filing of same with S. Hufford (.2). | 0.6 | 261.00 |
| 5/15/2016 | AVALENZU | Continue to draft motion to quash (4.3); draft letters to subpoenaed third parties (0.5). | 4.8 | 1,248.00 |
| 5/15/2016 | IGABRIEL | Work on and revise motion to quash (.4). | 0.4 | 174.00 |
| 5/16/2016 | AVALENZU | Review and revise motion to quash (0.8); draft letters to subpoenaed third parties (0.2); draft letter request to court for expedited hearing (1.2); review and revise proposed order (0.1). | 2.3 | 598.00 |
| 5/16/2016 | IGABRIEL | Work on motion to quash and revise same (.2). | 0.2 | 87.00 |
| 5/16/2016 | SAYTCH | Draft order granting motion to quash subpoenas issued after closed of discovery. | 0.3 | 69.00 |
| 5/17/2016 | AVALENZU | Finalize letter motion (0.1); finalize letters to third parties (0.1); communicate with third parties to notify them of letter motion and request to withhold action under subpoenas (0.6); analyze court's order on motion to quash (0.1); revise motion for summary judgment, Statement of Facts, and declaration (1.0). | 1.9 | 494.00 |
| 5/17/2016 | IGABRIEL | Meet and confer with counsel re motions to quash as required by Judge's procedures (.2); revise letter to note same and give direction re filing (.1); review order quashing subpoenas and draft correspondence to S. Hufford re same (.2). | 0.5 | 217.50 |
| 5/17/2016 | SAYTCH | Finalize, electronically file and serve letter motion requesting conference re: defendant's subpoenas issued after the close of discovery. | 0.3 | 69.00 |
| 5/19/2016 | AVALENZU | Analyze letter response to discovery dispute filed by defendants (0.2). | 0.2 | 52.00 |

| Date | Timekeeper | Narrative | Time Spent | Amount |
|-------------|-------------------|--|-------------------|---------------|
| 5/24/2016 | IGABRIEL | Review request from counsel to re-open discovery and extend MSJ deadlines, draft response to same (.2). | 0.2 | 87.00 |
| 5/25/2016 | IGABRIEL | Review letter from opposing counsel requesting extension of discovery, review and revise draft response to same (.3). | 0.3 | 130.50 |
| 5/26/2016 | AVALENZU | Analyze court's preliminary order on defendant's requests for extensions/discovery (0.1); draft response to defendant's request relating to application for foreclosure sale and request for additional time to file MSJ (2.2). | 2.3 | 598.00 |
| 5/26/2016 | IGABRIEL | Review letter from opposing counsel requesting extension of discovery, review and revise draft response to same (.3). | 0.3 | 130.50 |
| 5/27/2016 | AVALENZU | Work on one action issues in GA and NY proceedings (0.4); revise letter to judge re request for extensions (0.4); review complaint in GA proceeding (0.2); analyze individual procedures and local rules re applying for attorneys fees (0.2). | 1.2 | 312.00 |
| 5/27/2016 | IGABRIEL | Research GA law for response to Judge on lender's request for extension of MSJ deadline, incorporate same and supplement response (.5); research and analyze application of NY's one-action rule to bar deficiency action entirely, discuss same (.4). | 0.9 | 391.50 |
| 5/27/2016 | SAYTCH | Electronically file letter response to defendant's letter request to Court dated May 25, 2016. | 0.2 | 46.00 |
| 5/31/2016 | IGABRIEL | Review court's order denying further extension for MSJ filings (.1); | 0.1 | 43.50 |
| 6/9/2016 | IGABRIEL | Outline motion for attorneys fees in connection with discovery disputes (.2). | 0.2 | 87.00 |
| 6/14/2016 | AVALENZU | Draft application for attorney's fees incurred in discovery dispute (0.2); analyze local rules and individual procedures to file application for attorney's fees (0.6); communicate with chambers re process for filing application for attorney's fees (0.1). | 0.9 | 234.00 |
| 6/15/2016 | AVALENZU | Continue to draft application for attorney's fees (1.4); research Rule 37 and mandatory award of fees (0.7). | 2.1 | 546.00 |
| 6/15/2016 | IGABRIEL | Work re application for fees (.2). | 0.2 | 87.00 |

| Date | Timekeeper | Narrative | Time Spent | Amount |
|--------------|-------------------|--|-------------------|--------------------|
| 6/16/2016 | AVALENZU | Continue to draft application for attorney's fees. | 3.7 | 962.00 |
| 6/17/2016 | AVALENZU | Communicate with chambers re question on application for attorney's fees (0.2); communicate with supervising attorney re procedure to file application for attorney's fees (0.1); continue to draft application for attorney's fees (1.8); draft certification of counsel in support of application for attorney's fees (0.8). | 2.9 | 754.00 |
| 6/30/2016 | IGABRIEL | Work on application for attorneys' fees relating to prevailing in discovery disputes (1.6). | 1.6 | 696.00 |
| TOTAL | | | 40.0 | \$12,344.50 |